IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 26194 of 2007(R)

PETITIONER:

SECRETARY,
ARYANCODU GRAMA PANCHAYATH, ARYANCODU.

BY ADV. SRI.R.T.PRADEEP,
ADV. SRI.V.VIJULAL.

RESPONDENTS:
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1. **THE DEPUTY SUPERINTENDENT OF POLICE,**
   NEYYATTINKARA.

2. **THE CIRCLE INSPECTOR OF POLICE,**
   OFFICE OF THE CIRCLE INSPECTOR OF POLICE,
   VELLARADA.

3. **THE SUB INSPECTOR OF POLICE,**
   ARYANCODU POLICE STATION.

4. **ISSAC THOMAS,**
   ERUMATTU VEEDU, EDAVAL DESOM, KEEZHAROOR VILLAGE.

BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR,
GOVT. PLEADER SRI. SALIM.P.A.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

prv.

W.P.(C). NO.26194/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE JUDGMENT IN O.S. 721/98 PRL. MUNSIFF'S COURT, NEYYATTINKARA DTD. 09/06/2003.

EXT.P.2: COPY OF THE DECREE DTD. 09/06/2003 IN O.S. NO. 721/98 -DO-.

EXT.P.3: COPY OF THE NOTICE DTD. 19/10/2004 SENT BY COUNSEL FOR R.4. TO THE PETITIONER.

EXT.P.4: COPY OF THE COMPLAINT OF PETITIONER DTD. 07/10/04.

EXT.P.5: COPY OF THE INTIMATION DTD. 13/10/04 FROM ASST. DIRECTOR OF SURVEY.

EXT.P.6: COPY OF THE NOTICE DTD. 19/11/04 FROM SUPERINTENDENT OF SURVEY.

EXT.P.7: COPY OF THE NOTICE DTD. 23/12/04 FROM SUPERINTENDENT OF SURVEY.

EXT.P.8: COPY OF THE ORDER DTD. 22/03/05.

EXT.P.9: COPY OF THE ORDER DTD. 16/05/05.

EXT.P.10: COPY OF THE ORDER DTD. 10/08/06.

EXT.P.11: COPY OF THE COMPLAINT DTD. 16/04/07.

EXT.P.12: COPY OF THE COMPLAINT DTD. 16/04/2007.

EXT.P.13: COPY OF THE F.I.R. DTD. 17/04/2007 IN CRIME NO. 7/2007 OF ARYANCODE POLICE STATION.

EXT.P.14: COPY OF THE STATEMENT DTD. 24/04/2007.

EXT.P.15: COPY OF THE PROTEST COMPLAINT DTD. 10/08/07.

EXT.P.16: COPY OF THE COMPLAINT DTD. 03/08/07 BEFORE R.2.

EXT.P.17: COPY OF THE COMPLAINT DTD. 03/08/07 TO R.3.

prv.

W.P.(C). NO.26194/2007:

RESPONDENT'S EXHIBITS:

EXT.R4.A: COPY OF THE COUNTER AFFIDAVIT FILED BY THE R.4. IN W.P.(C). NO. 9603/2005 WITH ITS EXHIBITS.

EXT.R4.B: COPY OF THE ADDITIONAL COUNTER AFFIDAVIT FILED BY THE R.4. IN W.P. (C). 9603/2005 WITH ITS EXHIBITS.

EXT.R4.C: COPY OF THE COUNTER AFFIDAVIT FILED BY THE R.4. IN I.A. NO. 6153/2007 IN W.P.(C). NO. 9603/2005 WITH ITS EXHIBITS.

EXT.R8.E: COPY OF THE NOTICE NO. N.R.MG4-33719/2003 DTD. 11/11/2003 OF THE TALUK SURVEYOR.

EXT.R8.F: COPY OF THE RELEVANT PAGE OF THE SETTLEMENT REGISTER CONTAINING THE DESCRIPTION OF THE PROPERTIES COMPRISED IN PERUMKADAVILA PAKUTHY OF NEYYATTINKARA.

EXT.R8.G: COPY OF THE PARTITION DEED EXECUTED BY THE MEMBERS OF SOOLAMKUZHI THARAWAD IN THE YEAR 1101 M.E.

EXT.R8.H: COPY OF THE LETTER DTD. 26/04/2007 ADDRESSED TO THE SECRETARY OF THE PANCHAYAT.

EXT.R8.I: COPY OF THE OBJECTION OF THE R.4. FORWARDED TO THIS HONOURABLE COURT.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.26194 of 2007-R

Judgment

Balakrishnan Nair, J.

The petitioner is the Secretary of a Panchayat. He has approached this Court, seeking the following relief :

> "i. issue a writ of mandamus or any other appropriate writ, direction or order, directing respondents 1 to 3 to afford adequate protection to the trees standing in the river puramboke comprised in old Survey No.203/1 (Re-survey No.23/1,2,4,9,17 and 18 in Block No.26) of Keezharoor village to an extent of 8.14 acres vested with Aryancode Grama Panchayat from being cut and removed by the 4th respondent"

According to the petitioner, the 4th respondent, who has got title over only 6 cents of property in the above survey Nos., are claiming right over 58.5 cents of land and trying to cut and remove the trees standing there. The Panchayat moved the Police, but they are hand in glove with the 4th respondent, it is submitted. Hence this Writ Petition, seeking the above relief. The petitioner relies on Section 252 of the Kerala Panchayat Raj Act in support of his

contentions. The said section reads as follows :

> "Duties of Police Officers: -
>
> (1) It shall be the duty of every Police Officer - (a) to communicate without delay to the President and Secretary, any information which he receives of the design to commit or of the commission of any offence under this Act or any rule or bye-law made thereunder; and
>
> (b) to assist the President or the Secretary or any Officer of the Panchayat, demanding in writing his aid for the lawful exercise of any power vested in the President, the Secretary or in such Officer or employee of the Panchayat under this Act or any rule or bye-law made thereunder or for the performance of any function entrusted to any of them.
>
> (2) Any Police Officer, who omits or refuses to perform any duty imposed on him by this Act shall be deemed to have committed an offence under Section 41 of the Kerala Police Act, 1960".

The Police, even in the face of the above provision, has failed to assist him and to protect the property vested in the Panchayat, by virtue of the provisions of Section 169 of the Kerala Panchayat Raj Act, submits the petitioner.

2. The 4th respondent has filed a detailed counter affidavit in which it is submitted that concerning the very same subject matter, other Writ Petitions are pending before this Court. Since the Panchayat failed to to get orders in those writ petitions, this application for police protection is filed, it is submitted.

3. We do not propose to decide the civil dispute between the parties, nor the Police could be conferred jurisdiction to decide that. But, if the petitioner requests for police protection, the police shall render the same. On the strength of the police protection, if the Panchayat is invading the rights of the 4th respondent, he can work out his remedy against it. This direction will not affect the contentions of the 4th respondent, if he challenges the actions taken by the Panchayat with the help of the Police.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR,JUDGE

25.09.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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